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SUPREME COURT OF THE UNITED STATES.

No. 99.

R. C. DOWNES

vs.

WM. S. SCOTT.

IN ERROR TO THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF LOUISIANA.

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J. & G. S. GIDEON, printers.

STATE OF LOUISIANA, *parish of Madison,*
Ninth judicial district court:

Plea before the honorable the ninth judicial district court of the State of Louisiana, in and for the parish of Madison.

Be it known and remembered, that on the twentieth day of April, in the year of our Lord eighteen hundred and forty-two, R. C. Downes, by his attorneys, filed in this court his petition, which is in the words following, to wit:

To the honorable the judge of the ninth judicial district of the State of Louisiana, holding court in and for the parish of Madison, in said district and State.

The petition of Richard Charles Downes, of said parish, respectfully shews, that petitioner is the legal owner and possessor of an undivided half of a tract of land of one hundred and thirty-three and eight hundredths acres, situate on Brushy bayou, in said parish and State, it being lots number one and three, of section number six, of township number sixteen, range 13 east, of district of lands subject to sale at Ouachita, in Louisiana, which said tract of land was patented as a pre-emption right, by the Government of the United States of America, on the fifteenth day of June, in the year of our Lord eighteen hundred and thirty-seven, to Elijah Evans and Levi Blakey, as tenants in common, and not as joint tenants; that by the laws of the United States, for the division and partition of lands situated, owned, and settled and improved, as is and was the said tract of land, it is required that the same be done and made by a north and south, or east and west line; and petitioner shews, that said tract of land will have to be divided and partitioned by a north and south line, in order to give each of said patentees, or their vendees or successors, the original settlement and improvement of each of said patentees; that petitioner is the legal owner and possessor of the original settlement and improvement of said patentee Elijah Evans, which petitioner shows is on the east half of said tract of land; that William S. Scott, of said parish and State, is in possession of the west half of said tract of land, and part of the east half of the same; that said William S. Scott, the defendant in this suit, has enclosed and is cultivating a part of the east half of said tract of land, so as aforesaid belonging to petitioner, which part, petitioner shows, amounts in quantity to ten or fifteen acres; that said defendant, by so enclosing said part of said east half of said tract of land, which, petitioner shows, said defendant did, without giving him notice to be present according to law, and so cultivating the same as aforesaid, has injured and endamaged petitioner in the sum of three hundred and fifty dollars; that petitioner has made an amicable demand of said defendant to have said tract of land divided and partitioned by a north and south line, which he has refused, and still refuses

to do. Wherefore, petitioner prays, that said defendant be cited to answer this petition according to law; that said tract of land be divided and partitioned, by a north and south line, according to law, with the least possible delay, and in preference to the ordinary suits pending before this honorable court; that said defendant be sentenced, adjudged, and decreed to pay petitioner said sum of three hundred and fifty dollars for said injury and damage, and costs of this suit; that petitioner be decreed to be the legal owner and possessor of said east half of said tract of land, and that petitioner may have all the relief that the nature and justice of his case may require.

The words "range 13 east," interlined before filing.

DAVID BRADFORD, and
J. WALTER PHILIPS.
Att'ys and counsellors at law.

(Endorsed.)—512, 9th district court, R. C. Downes vs. Wm. S. Scott. Petition filed April 28th, 1842.

J. W. COUCH, *Dep. clerk.*

Citation.

And on the 20th day of April, A. D. 1842, the following citation was issued.

The State of Louisiana,
Ninth judicial district court, parish of Madison.

R. C. DOWNES, vs. WM. S. SCOTT. } No. 512.

To Wm. S. Scott, residing in the said parish of Madison.

You are hereby summoned [and] cited, either to comply with the demand contained in the petition of the said R. C. Downes, of which a copy accompanies this citation, or to deliver your answer to the said petition at the office of the clerk of said court, held in the town of Richmond, in said parish, within eleven days after service hereof.

[SEAL.] Witness the honorable Thomas Curry, judge of said court. Signed, seal, and delivered, this 20th day of April, 1842.

JOHN T. MASON,
Clerk of said court.
By J. W. COUCH, *Dep. clerk.*

Sheriff's return.

Rec'd on the 20th day of April, 1842, and served on the 21st day of the same month and year, by handing a certified copy of this citation and of the petition to the defendant Wm. S. Scott, in person, at his domicil on the Brushy bayou, in the parish of Madison, La.

THO. B. SCOTT, *Shff.*

Mileage 25—Service 2 50.

(Endorsed.)—512, Madison district court, citation to Wm. S. Scott, filed April 27th, 1842.

J. W. COUCH, *Dep. clerk.*

Minutes.

And on Tuesday, May 3d, A. D. 1842, the following entry was made on the minutes of the court, p. 259.

R. C. DOWNES, vs. WILLIAM S. SCOTT. } 512.—Answer filed.

Answer.

Ninth district court, parish of Madison:

R. C. DOWNES, vs. WM. S. SCOTT. } No. 512.

The defendant, residing in the parish aforesaid, by his counsel, comes into court and denies each and every allegation in plaintiff's petition contained, except those which he shall hereinafter specially admit.

Defendant admits, that the plaintiff is the owner of the undivided half of the land mentioned in his petition, but denies that he has any right to have the two lots therein specified thrown into one, and divide them by a north and south, or east and west line; denies that he ever refused to partition said land with the plaintiff, but avers that he has frequently desired the said plaintiff to partition the said land, by running a line north and south through the said lots separately; sheweth, that he has always been ready, and is still ready and willing, to divide the said land as required by law.

Defendant further showeth, that the suit of the plaintiff against him is vexatious and intended to harrass; wherefore, the premises considered, defendant prays, that the said land may be divided according to law; that he recover of the said plaintiff the costs of suit, and the further sum of two hundred dollars damages for his instituting a vexatious and harrassing suit againts him; for trial by jury, and for general relief, &c.

BRISCOE & SNYDER, *Deft. att'y.*

(Endorsed.)—512, ninth district court, parish of Madison, R. C. Downes vs. Wm. S. Scott, answer filed 3d May, 1842.

JOHN T. MASON, *Clerk.*

Minutes.

And on Wednesday, May 4th, A. D. 1842, the following entry was made on the minutes of the court, p. 267.

R. C. DOWNES, vs. WM. S. SCOTT. } 512.—Set for to day.

Subpœna.

The State of Louisiana,
Parish of Madison, ninth district court:

To the sheriff of the said parish, greeting:

You are hereby commanded to summon Elijah Evans to be and appear in the district court, held at the court-house in the town of Richmond, in the parish aforesaid, on the 4th day of May inst., then and there to testify, and the truth to say, in a certain matter of controversy, now pending in said court, between R. C. Downes, plaintiff, and William S. Scott, defendant, on the part of the plaintiff, and not thence depart until legally discharged. Herein fail not.

[SEAL.] Witness the honorable Thomas Curry, judge of said court, this 4th day of May, A. D. 1842.

JOHN T. MASON,
Clerk of said court.
By J. W. COUCH, *D. clerk.*

Sheriff's return.

Rec'd on the 4th of May, served same day by handing a subpœna to Elijah Evans, in person, at Richmond, to attend as directed within.

Service 62½. THO. B. SCOTT, *Shff.*

(Endorsed.)—No. 512, R. C. Downes vs. Wm. S. Scott, subpœna filed May 4th, 1842.

J. W. COUCH, *D. clerk.*

The State of Louisiana,
Parish of Madison, ninth district court:

To the sheriff of the said parish, greeting:

You are hereby commanded to summon Robert M. Scott and E. R. J. Allnutt, to be and appear in the district court, held at the court-house in the town of Richmond, in the parish aforesaid, on the 4th day of May inst., then and there to testify, and the truth to say, in a certain matter of controversy, now pending in said court, between R. C. Downes, plaintiff, and William S. Scott, defendant, on the part of the defendant, and not thence depart until legally discharged. Herein fail not.

[SEAL.] Witness the honorable Thomas Curry, judge of said court, this 4th day of May, A. D. 1842.

JOHN T. MASON,
Clerk of said court.

Sheriff's return.

Rec'd on the 4th day of May, 1842, and served on the same day, by handing a summons to each of the within named witnesses in person, in Richmond, La., parish of Madison, La., May 4th, A. D. 1842.

Service 1 25. G. W. TARKINGTON, *Dep. shff.*

(Endorsed.)—512, R. C. Downes vs. Wm. S. Scott, subpœna filed 4th May, 1842.

JOHN T. MASON, *Clerk.*

Minutes.

And on Wednesday, May 4th, A. D. 1843, the following entry was made on the minutes of the court, p. 269.

R. C. Downes, vs. W. S. Scott. } 512.

This case came on this day for trial, whereupon came the following jurors, to wit, Jacob Hilliard, T. C. Williams, Josiah Stanbrough, James Brooks, David Stanbrough, James Abbott, Robert Dyer, Samuel Anderson, Henry Lewis, Joseph Dunlap, James Rose, Henry Stone, to each of whom, the oath required by law having been duly administered, Henry Lewis was named foreman; after hearing the pleadings, and receiving the charge of the judge, the jury retired to deliberate upon their verdict, with instructions to bring in a sealed verdict.

Evidence.

R. C. Downes, vs. Wm. S. Scott. }

Thomas B. Scott, sworn for plaintiff, says, the only time he ever heard any conversation between the plaintiff and deft., on the subject of the land in dispute, was when they both agreed to select Alfred Foster, of this parish, to run the line. Witness has since heard defendant ask Alfred Foster, when it would be convenient for him to run the line. Does not know that the line to be run by Mr. Foster was intended to be a lawful survey. Says the plaintiff contended for a north and south line. The house that deft. now lives in, is about a quarter of a mile west of the house that Elijah Evans formerly resided in, and that Mr. Bradford now resides in; and that the house that Mr. Bradford lives in, is about two hundred yards west of the eastern boundary of the tract of land Mr. Bradford now resides on. Witness thinks that a north and south line would leave the former residence of Evans on the east, and the residence of William Scott on the west.

Cross examined.

Witness thinks that a continuous north and south line through the centre, will throw nearly all of the cleared land on the east side of the line. Witness says, that the land in lot No. 3, is inferior to any other portion of the tract, and portions of it subject to overflow. Says nearly all of lot No. one is cleared. Says on lot No. 3, not exceeding twenty acres is cleared. Brushy bayou is the boundary between the lots one and three. Is satisfied that the bayou is the division of the lots one and three. Witness says, that a north and south line, dividing both lots, and running from the centre, would not be an equal division of the two lots, taking them separately, but that they would be in unequal parts—in running a north and south line from the centre of lot No. one, would not leave more than one-third of the lot on the west side of the line.

Wm. S. Scott sworn for plaintiff says, that before the institution of this suit, that plaintiff asked him to have this land divided by a continuous north and south line, and that plaintiff exhibited to him, witness, the act of Congress, 29th May, 1830, and that he, witness, took a copy of it.

Cross examined.

Witness says, whenever he has spoken to judge Downes or Mr. Bradford on the subject of the division of this land, he has always expressed a wish to divide it by a north and south line, each lot to be divided separately and in equal portions.

Elijah Evans sworn for plaintiff says, that the late residence of Col. Allnutt is about the spot where Levi Blakey formerly lived, and that the late residence of Judge Downes is the place where witness improved and proved a pre-emption on, on Brushy bayou.

The plaintiffs here close their testimony.

E. R. J. Allnutt sworn for defendant, says, if a north and south line were run continuously through lot No. one and three, it would divide the lots in unequal portions, and in lot No. one, Mr. Scott would receive about one-third; in dividing the two lots by a continuous north and south line, it would leave nearly all the improved land on the east side of the line. Witness says, that plaintiff has more land now in cultivation than he is entitled to, provided the lots were divided separately by a north and south line in equal parts. Witness says, the land on the north side of the bayou is all in cultivation except a slough in plaintiff's field; says that the west half of lot No. 3 is nearly all subject to overflow; that the east half of lot No. 3 is much superior to the west half. Witness says, considering the two lots as one tract of land, and dividing them by one continuous north and south line, running through the centre, that the east half would be the most valuable. Witness formerly owned the part that defendant now is on. Witness says he would consider the east half worth three hundred dollars more than the west, provided the land was divided by a north and south line; says that Brushy bayou is the boundary line between one and three, a north and south line through lot one and three, would throw nearly two-thirds of lot No. 3 on the west side of the line.

Cross examined.

Witness says, that the present residence of the defendant is about the spot where Levi Blakey formerly lived, and that the residence of Mr. Bradford is about the same spot where Mr. Evans lived; the extent of the line of the northern boundary of lot No. one is nearly a mile, and extends across section six. Witness says, that the Evans house is about two hundred yards from the eastern boundary of said lot No. one, and that the Blakey house, where defendant now lives, is about a quarter and half quarter from the eastern boundary of lot No. one. Witness says, that a continuous north and south line, running through the land patented, and dividing it into two equal parts, would leave the original improvement of Evans in the east, and Blakey on the west of it. Witness

being asked, if an east and west line be run, dividing the land patented into two equal parts, whether the original settlement or improvements of each party would be left on separate sides of said line, the one to the north, and the other to the south—witness answers, that they would be on the north.

State of Louisiana, parish of Madison:

I do hereby certify the foregoing to be all the evidence received, and documents offered, in the foregoing case.

Witness my signature, this 6th day of May, 1842.

JOHN T. MASON, *Clerk.*

(Endorsed.)—512, R. C. Downes vs. W. S. Scott, evidence filed 6th May, 1842.

JOHN T. MASON, *Clerk.*

Statement of facts.

R. C. Downes, vs. Wm. S. Scott. } No. 512.

9th district court, parish of Madison, State of Louisiana:

The following is the statement of facts, as agreed upon by the counsel for the parties in this case, to wit, the written evidence consists of the admissions in the pleadings, the copy of the patent set forth in the petition, [and] the diagram taken from the township map.

It was agreed and admitted, that Blakey and Evans, the pre-emptioners under the patent set forth in petition, each obtained a float, in virtue of their settlement on the land patented.

The parol evidence, as taken down by the clerk on the trial.

The words "in virtue," interlined above before signing.

DAVID BRADFORD, *Att'y for plff.*
STACY, BRISCOE & SNYDER,
Defendant's attorneys.

(Endorsed.)—No. 512, 9th district court, parish of Madison, R. C. Downes vs. Wm. S. Scott, statement of facts filed 6th May, 1842.

JOHN T. MASON, *Clerk.*

Copy of patent.

Pre-emption certificate No. 1,231.

The United States of America to all to whom these presents shall come, greeting:

Whereas, Elijah Evans and Levi Blakey, of Concordia, Louisiana, have deposited in the General Land Office of the United States, a certificate of the register of the land office at Ouachita, whereby it appears that full payment has been made by the said Elijah Evans and Levi Blakey, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provisions for the sale of the public lands," for the lots numbered one and three, of section six,

in township sixteen, of range thirteen east, in the district of lands subject to sale at Ouachita, Louisiana, containing one hundred and thirty-three acres and eight hundredths of an acre, according to the official plat of the survey of the said lands, returned to the General Land Office by the surveyor general, which said tract has been purchased by the said Elijah Evans and Levi Blakey. Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress, in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Elijah Evans and Levi Blakey, and to their heirs, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereunto belonging, unto the said Elijah Evans and Levi Blakey, and to their heirs and assigns forever, as tenants in common, and not as joint tenants.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the fifteenth day of June, in the year of our Lord one thousand eight hundred and thirty-seven, and of the independence of the United States the sixty-first.

By the President:

MARTIN VAN BUREN,
By A. VAN BUREN, *Sec'y.*
H. M. GARLAND,
Recorder of the General Land Office, [SEAL.]

Recorded vol. 2, page 482.

STATE OF LOUISIANA, *parish of Madison:*

I certify that the foregoing is a true copy of the original, and the record thereof in my office, this 3d day of December, A. D. 1841.

[L. S.] Witness my signature, and the impress of my official seal.

RICH'D CHAS. DOWNES,
Parish Judge.

Endorsed 512: Elijah Evans and Levi Blakey. Letters patent. Copy.

[For map, see original.]

R. C. DOWNES
vs.
WM. S. SCOTT.
} No. 512.

Ninth district court, parish of Madison, State of Louisiana.

It is agreed and admitted that the above plat is a correct copy of section six, taken from an authentic map of township sixteen, range thirteen east, district north of Red river, Louisiana, as adduced in evidence on the trial of the above case; that the above be filed in place of said township map, and the township map be withdrawn.

The words "in evidence," and "the," interlined before signing.

DAVID BRADFORD,
For Plff.
STACY, BRISCOE & SNYDER,
Deft. Att'ys.

Endorsed 512: Copy of map, filed May 5th, 1842.
J. W. COUCH, *Dep. Clerk.*

Minutes.

And on Thursday, May 5th, A. D. 1842, the following entry was made on the minutes of the court, p. 272.

R. C. Downes
vs. } 512. Bill of exceptions filed.
Wm. S. Scott.

Bill of exceptions.

R. C. Downes
vs. } No. 512.
Wm. S. Scott.

Ninth district court, Madison parish, State of Louisiana.

Be it remembered that, on the trial of the case, the judge charged the jury that the act of Congress, of May 29, 1830, entitled "An act to grant pre-emption rights to settlers on the public lands" was not applicable to the case before the court and jury; that said act of Congress had no binding force as to the dividing or partitioning lands granted to settlers on the same quarter section or fractional quarter section, after issuing a patent therefor, but that such division and partition must be in conformity with the laws of Louisiana, and the principles of equity and justice; that the object of said act of Congress was to entitle two settlers on the same quarter, or fractional quarter, section of land, to the benefit of a float each for eighty acres of land elsewhere; to which charge plaintiff excepts, and tenders this his bill of exceptions, by his counsel, for the signature of the judge.

Done and signed, in open court, this 5th day of May, 1842.

THO. CURRY,
Dist. judge ninth judicial district.

Endorsed 512: R. C. Downes vs. W. S. Scott. Bill of exceptions. Filed 5th May, 1842.

JOHN T. MASON, *Clerk.*

Minutes.

And on Thursday, May 5th, A. D. 1842, the following entry was made on the minutes of the court, p. 274.

R. C. Downes
vs. } 512.
W. S. Scott.

The jury returned into court this day with their verdict, and it was

duly read and agreed to, and ordered to be recorded as follows, to wit: We, the jury, have agreed that the two lots, No. 1 and 3, be divided separately, in equal portions, running by a north and south line.

H. LEWIS, *Foreman.*

Whereupon the court rendered the following judgment:

By reason of the verdict of the jury, and of the law and evidence, it is ordered, adjudged, and decreed, that the lots, numbered one and three, in section number six, in township sixteen, of range thirteen east, described in plaintiff's petition, and held in equal and undivided ownership by plaintiff and defendant, be separately divided and partitioned between said parties by a line running due north and south through each of said lots in such a manner as to divide each of said lots into two equal portions; that [a] surveyor be appointed to run said lines, and to make return into court, on or before the first day of its next term, [of] the proces verbal of his proceedings; and it is further ordered that the plaintiff pay the costs of suit incurred up to the date of the judgment.

And on Saturday, May 7th, A. D. 1842, the following entry was made on the minutes of the court, p. 280.

R. C. DOWNES vs. WILLIAM S. SCOTT. } 512. Motion for new trial filed.

Motion.

R. C. DOWNES vs. WM. S. SCOTT. } No. 512.

Ninth district court, parish of Madison, State of Louisiana.

The plaintiff in the above case, by his counsel, moves the court for a new trial on the following grounds:

1st. For misdirection of the judge in his charge to the jury on the trial of said case, as set forth in plaintiff's bill of exceptions to said charge.

2d. That the verdict of the jury is contrary to law and evidence.

3d. Because the verdict of the jury is void for uncertainty and indefiniteness, as it does not certainly and definitely, or in any manner as it should do, specify whether the plaintiff is entitled to the east half or the west half of the land set forth in the petition, and in the patent, in this case.

BRADFORD, PHILIPS, & COPELY,
Atts. for plaintiff.

Endorsed No. 512: 9th district court, parish of Madison, R. C. Downes vs. Wm. S. Scott. Motion for new trial filed 7th May, 1842.

JOHN T. MASON, *Clerk.*

Minutes.

And on Wednesday, May 18th, A. D. 1843, the following entry was made on the minutes of the court, p. 311.

R. C. DOWNES
vs. } 512.
WM. S. SCOTT.

The motion for a new trial in this case was taken up, argued, and overruled.

Bill of exceptions.

R. C. DOWNES
vs. } No. 512.
WM. S. SCOTT.

District court, ninth judicial district, parish of Madison, State of Louisiana.

Be it remembered that, on the hearing of the arguments of the counsel for the parties in the above case, on the motion for new trial, the judge overruled the motion, and reiterated the opinion given on the trial in chief, to which a bill of exceptions was taken and signed, and in which the grounds of said opinion are set forth; now, therefore, plaintiff, by his counsel, excepts to the opinion of the judge overruling said motion for new trial, and tenders this his bill of exceptions thereto for the signature of the judge.

Done and signed, in open court, this 19th May, 1842.

THO. CURRY,
Dist. judge, ninth judicial dist.

Endorsed 512, district court, 9th district, parish of Madison, R. C. Downes vs. Wm. S. Scott. Bill of exceptions. Filed May 19th, 1842.

J. W. COUCH, *Dep. Clk.*

Judgment.

And on the 20th May, A. D. 1842, the following judgment was signed in open court by the judge.

R. C. DOWNES
vs. } No. 512.
WM. S. SCOTT.

Ninth district court, parish of Madison, May 5th, May term, A. D. 1842.

By reason of the verdict of the jury, and of the law and evidence, it is ordered, adjudged, and decreed, that the lots, numbered one and three, in section No. six, in township sixteen, of range thirteen east, described in plaintiff's petition, and held in equal and undivided ownership, by plaintiff and defendant, be separately divided and partitioned between said parties, by a line running due north and south through each of said lots, in such a manner as to divide each of said lots into two equal portions; that Alfred H. Foster, surveyor, be appointed to run said lines, and to make said partition and division in conformity with this judgment; and that he return into court, on or before the first day of its next term, the preces verbal of his proceedings; and it is further ordered

that the plaintiff pay the costs of suit incurred up to the date of this judgment.

Done and signed, in open court, this 20 day of May, 1842.

THO. CURRY,
Dist. judge, 9th judicial district.

Endorsed 512, 9th dist. court, parish of Madison. R. C. Downes, vs. 512, Wm. S. Scott, judgment.

Petition of Appeal.

And on the 20th of May, A. D. 1842, came the plaintiff by his attorneys, and filed in this court his petition of appeal in the words and figures, as follows, to wit:

To the honorable Thomas Curry, district judge of the ninth judicial district of the State of Louisiana.

The petition of appeal of R. C. Downes, of the parish of Madison, in said district and State, represents respectfully, that at the May term of the district court held at Richmond, in said parish of Madison, in the year eighteen hundred and forty-two, a final judgment was rendered by said court in a suit wherein petitioner is plaintiff and Wm. Scott is defendant, and numbered on the docket of said court five hundred and twelve, by which judgment petitioner believes himself to have been aggrieved: wherefore petitioner prays to be allowed to appeal from said judgment to the supreme court of said State, returnable at the next term of said supreme court at Alexandria, in said State, on the first Monday in October, eighteen hundred and forty-two, on petitioner's giving the security which your honor may order according to law.

D. BRADFORD,
J. WALTER PHILIPS,
And G. W. COPLY,
Plaintiff's attornies.

Order for appeal.

Let an appeal be allowed as prayed for, on petitioner giving security in the sum of one hundred dollars, returnable at the next term of the supreme court of Louisiana, at Alexandria, in said State, on the first Monday in October, in the year of our Lord eighteen hundred and forty two. Signed this 20th May, 1842.

THO. CURRY,
District judge 9th judicial district.

Endorsed 512, 9th district court, parish of Madison, State of Louisiana. R. C. Downes vs. Wm. S. Scott; petition of appeal; filed 20th May, 1842.

JOHN T. MASON, *cl'k.*

Appeal bond.

State of Louisiana, parish of Madison:

RICHARD CHARLES DOWNES, vs. WILLIAM S. SCOTT. } No. 512.

Know all men by these presents, that we, Richard Charles Downes and James M. Downes, are held and firmly bound to William S. Scott, in the just and full sum of one hundred dollars, for the payment of which sum we hereby bind ourselves, our heirs, executors, or administrators, this twenty-fifth day of May, A. D. 1842.

The condition of the above obligation is such, that whereas the said Richard Charles Downes is the appellant from a judgment of the court aforesaid, rendered in the said suit, No. 512. Now, the above bond is given as security that the said appellant shall prosecute his appeal, and that he will satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in his appeal, otherwise the said James M. Downes, the surety, shall be liable in his place. In testimony whereof, we hereunto subscribe our names, this said 25th May, A. D. 1842.

R. C. DOWNES,
J. M. DOWNES, *surety.*

Witness: J. W. COUCH.

Endorsed—No. 512, R. C. Downes vs. Wm. S. Scott; appeal bond; filed May 25th, 1842.

J. W. COUCH, *dep. cl'k.*

Citation of appeal.

And on the 12th July, A. D. 1842, the following citation issued:

State of Louisiana, parish of Madison, ninth district court:

R. C. DOWNES, vs. WM. S. SCOTT, } No. 512.

To William S. Scott, residing in the parish of Madison, and State aforesaid: whereas, R. C. Downes, appellant, has filed his petition and obtained an order of appeal from the judgment rendered in the above entitled suit, and has given bond and security according to law; now, therefore, you are hereby cited to be and appear in the supreme court of Louisiana, to be holden at Alexandria, in this State, on the first Monday in October next, to answer to said petition according to law.

Witness the honorable Thomas Curry, judge of the ninth district court, in and for the parish of Madison, this 12th day of July, A. D. 1842. [SEAL.]

JOHN T. MASON, *clerk of said court.*
By J. W. COUCH, *deputy clerk.*

Sheriff's return.

Received on the 12th day of July, 1842, and served on the 25th day of the same month, by leaving a certified copy of this citation of appeal, and of the petition of appeal, with Alonzo Snyder, a free white person above the age of 14 years, at and living [at] the domicil of the defendant, parish of Madison, La., July 25th, A. D. 1842.

Service 2 50; mileage 37½.

G. W. TARKINGTON, *Dep. Sh'ff.*

(Endorsed)—512; citation of appeal to Wm. S. Scott; filed July 25th, 1842.

J. W. COUCH, *dep'y cl'k.*

Minutes.

And on Monday, November 21st, A. D. 1842, the following entry was made on the minutes of the court, p. 340.

R. C. DOWNES vs. WM S. SCOTT. } 512.

On motion of D. S. Stacy, esq., one of the counsel for the defend ant and appellee, it is ordered that the judgment of the supreme court be entered on the minutes of the court. (The decree of the supreme court was not filed in this office until April 1st, 1843, and was entered upon the minutes as of the November term; the counsel for plaintiffs objecting, it was again entered as of the May term, 1843, and will be found copied on pages 27 to 32, of this transcript.)

And afterwards, to wit, on Tuesday, November 22d, A. D. 1842, the following entry was made on the minutes of the court, p. 355.

R. C. DOWNES vs. WM. S. SCOTT. } 512.

It is ordered that the rule against Richard Charles Downes issue returnable as moved for.

Rule, &c.

R. C. DOWNES vs. WM. S. SCOTT. } No. 512.

Ninth district court, parish of Madison.

D. S. Stacy, one of the counsel for Wm. S. Scott, defendant in the above entitled suit, makes oath that he, affiant, applied to the clerk of the supreme court, and requested him to make out a certified and authentic copy of the judgment rendered by said supreme court in the above suit, at its October term, A. D. 1842, which copy, affiant informed the said clerk, was for the use of, and to be transmitted to, the court *a quo*.

That shortly afterwards affiant asked said clerk for said copy of the decree when he was informed by said clerk that he had made it out, but

had delivered it to some person who had asked for it, and affiant believes said clerk stated George W. Copely to have been that person. Affiant further states that he has been informed that a certified copy of said decree was delivered by said Copely to James J. Amonett, esq., and that said Amonett delivered said copy to the plaintiff in this suit, viz., Richard Charles Downes, esq., and affiant believes that said decree is in the possession *of* of said Downes. That affiant has requested said Downes to deliver up said decree, that it might be registered in the district court, which he did not do, or express his willingness to comply with said request; and that affiant has been informed that the clerk of this hon. court has applied to said Downes, and requested the delivery of said decree that it might be registered on the minutes of said court in pursuance of the order of said court, but that said Downes refused to deliver it up to the clerk for said purpose. That affiant believes that said copy of the decree of the supreme court is the same directed by him to be made out, and that the same belongs to said dist. court.

D. S. STACY.

Signed and sworn to in open court, this 22d Nov., 1842.

JOHN T. MASON, *Clerk.*

Upon the above affidavit the defendant, Wm. S. Scott, by his undersigned counsel, moves that the said R. C. Downes be ruled to file in this hon. court, on or before the 24th day of the present month, the copy of the decree described in the foregoing affidavit, or in default thereof, that he shew cause to the contrary on or before that day.

SNYDER, STACY & SPARROW,
Atts. for deft.

Endorsed.—512; 9th dist. court; R. C. Downes vs. No. 512, Wm. S. Scott; rule to shew cause; filed 22d Nov. 1842.

JOHN T. MASON, *Clk.*

Minutes.

And on the 24th day of November, A. D. 1842, the following entry was made on the minutes of the court, p. 362.

R. C. Downes vs. Wm. S. Scott. } 512.—Exception to rule filed by defendant.

Exception.

R. C. Downes vs. Wm. S. Sott. } No. 512.—Ninth district court, parish of Madison.

R. C. Downes, the plaintiff, in the above entitled cause, by his undersigned counsel, appears and excepts to a rule of said court, requiring said defendant, "to file in this hon. court, on or before the 24th day of the present month the copy of the decree described" in an affidavit attached to said rule, on the following grounds, to wit:

Because said rule was granted without any law or evidence authorising the same; that the only material shewing in said affidavit amounts to the belief of the affiant that the copy of the decree, alleged to be in the possession of this appearer, belongs to this hon. court, without adducing the certificate of the clerk of the supreme court to that effect, which would be better, if not the best, evidence of the fact, which the law requires before the court should grant a rule, as has been done in this matter; that it was incumbent on the defendant or his counsel, if they saw fit, to procure and file in this court a copy of the decree in question; but in no manner whatever was it the duty of the appearer or his counsel to do so; that it is obvious and indisputable, a copy could have been procured from the clerk of the supreme court of the decree in question by the defendant or his counsel, or instructions might have been given to the clerk of the supreme court to forward the same to the clerk of this hon. court, which not being done, disentitles said defendant from the benefit sought by said rule, and entitles this appearer to have said rule discharged, which he respectfully moves to be done, and should this exception be overruled, this appearer reserves his right to make such further answer as this matter may require.

DAVID BRADFORD.

Endorsed.—512; R. C. Downes vs. Wm. S. Scott; exception to rule on plaintiff; filed 25th Nov., 1842.

JOHN T. MASON, *Clk.*

Minutes.

And on Wednesday, May 3d, A. D. 1843, the following decree of the supreme court was entered on the minutes of the court, p. 411.

R. C. Downes
vs. } 512.
Wm. S. Scott.

On motion of counsel for plaintiff, it is ordered that the judgment of the supreme court be entered on the minutes of this court, and it is in the words and figures, to wit:

Supreme court, western district, October term, 1842.

Appeal from the district court of the 9th district for the parish of Madison.

The petitioner alleges he is the legal owner and possessor of an undivided half of a tract of land containing 133 $\frac{8}{100}$ acres, situated on both side of Bushy bayou, being lots Nos. 1 and 3, of section No. 6, in township No. 16 north, range No. 13 east, which land was patented by the United States as a pre-emption right to Elijah Evans and Levy Blakey as tenants in common, and not as joint tenants. He says, by the laws of the United States, it is required that lands so situated and purchased should be divided between the co-proprietors or tenants in common, by a north and south, or east and west line. He says this land

must be divided by a north and south line in order to give each party their improvements of his authors, (the original settlers.) He says he is the original owner of the portion that includes the site of the original settlement of the patentee Elijah Evans, which will be on the east half of said land. It is further represented that the defendant Scott is in the possession of the west half of said land, and part of the east half of the same; that he has enclosed and is cultivating some of the land belonging to petitioner, say from ten to twelve acres, by doing which he has sustained damage to the amount of $350. He alleges he has frequently desired the defendant to divide said tract of land by a north and south line, which he refuses. The petition concludes with a prayer that the land be divided by a north and south line; that complainant be decreed to be the legal owner and possessor of the east half, and that Scott pay him $350 damages. The defendant in his answer admits the plaintiff is the owner of an undivided half of the land, which he says is in two distinct lots, as stated in the patent. That he is willing and always has been to divide the land by a north and south line, but he objects to throwing the two lots together, and dividing them as a whole by a continuous north and south, or east and west line. He has frequently desired the plaintiff to divide each lot by a north and south line, which he, defendant, is ready to do, but the plaintiff refuses. He joins in the prayer for a petition according to law, prays to recover $200 damages from plaintiff for instituting a vexatious suit against him, and for costs. The cause was tried by a jury. It was shewn by the public surveys, that in consequence of a considerable stream running through the section, the north half of it was not, as in other sections, divided into two equal quarters, as is generally the case, but was laid off into three lots of irregular shapes, containing unequal quantities. Lots 1 and 3 adjoin each other, the former being a slip of upwards of a mile front on the north side of the bayou, with very little depth at one boundary, and less than half a mile on the other. The superficial quantity is sixty $\frac{80}{100}$ acres; lot No. 3, is nearly a triangle, lying on the south side of the bayou, and as far as it fronts to the same is opposite to the lot 1, [and] contains $72\frac{28}{100}$ acres. It is in evidence that, by dividing the lands by a continuous north and south line through the two lots, the plaintiff would have on the east side of the line nearly twice as much land as the defendant would have on the west, also much the largest portion of the cleared land, and more valuable by $300. It was also shewn the lot No. 3 was subject to inundation, and by dividing it as desired by plaintiff, much the largest portion of the overflowed land would fall to the defendant. It is shewn that by dividing each lot equally by a north and south line, each party will have his houses on each side of it in lot No. 1, on the north side of the bayou, and have his portion of No. 3 opposite, but the fronts will not be exactly the same. The jury found a verdict that the lots Nos. 1 and 3 be divided separately in equal portions by a line running north and south.

After overruling a motion for a new trial, the court gave a judgment ordering the lots to be partitioned seperately by running a north and

south line through each, so as to divide each lot into equal portions, and appointed a surveyor to run out the division lines, and make a return of his operations into court on or before the first day of the next term, and ordered the plaintiff to pay the costs up to that time. From this judgment he has appealed. The application for a new trial was predicated on the misdirections of the judge in his charge to the jury, that the verdict was contrary to law and evidence; and lastly, that it was void for uncertainty, as it does not certainly and definitely specify whether the plaintiff is to have the east or west half of the land. The judge charged the jury, that the act of Congress relating to pre-emption rights, passed on the 29th of May, 1830, was not applicable to the case before them. That it had no binding effect as to the partitioning of lands sold to settlers on the same quarter sections or fractional quarter, after a patent had issued. That such partition must be made in conformity to the laws of the State, and the principles of equity and justice; and that the object of the act was to entitle two settlers on the same quarter or fractional quarter to the benefit of a *float* or claim for 80 acres of land elsewhere. To this charge the plaintiff excepted. We are of opinion, the judge did not essentially err. The language he used does not exactly express our ideas, but the conclusion we have come to is the same. We are of opinion, that after the United States has sold and given a patent for a tract of land which it has sold, the property is then vested in the citizen who is entitled to the patent, and the State laws operate on it precisely as on all other property, except as relates to taxation, or some special exception. That for the effecting a partition, the laws of the State and the contract of the parties are to control as in other cases. The act of Congress under which Blakey and Evans purchased the land, made the contract between them as to the quantity each should have; the principal objects of that contract, were, first, to give each party the portion of land on which his house and improvements were situated. Secondly, to give as nearly as possible an equal quantity to each. The course of the lines is secondary, and intended only as a means of effecting the principal objects. One equality of value in the portions does not seem to have been considered as important, and is not included in the contract. Courts in ordering a partition between two original pre-emptors, or those holding under them, will look to the act of Congress as containing in relation to regular quarter sections the primary intentions of the parties as to the direction of the lines, but in relation to a fractional, or as the Commissioner of the General Land Office calls it, an anomalous survey, the rule does not apply, and the judge was therefore correct in directing the jury the act of Congress was not to govern them absolutely. We can easily imagine two improvements so situated on a fraction of land, that neither a north and south, or east and west line would give each an equal quantity, and his improvements also. In such a case, the line must take some other direction, or the land could never be divided in kind; an examination of the act of Congress, will shew there is nothing mandatory in it, even to its own officers; it is directory only in its operation on the right of individuals, and is not so unbending as to compel the perpetration of an act of

gross injustice. A perusal of the evidence satisfies us, the jury decided in conformity to it, and the principles of law and justice. The plaintiff complains the verdict is indefinite and uncertain, as it does not state whether he is to have the east or west portions of the lots when decided. The verdict and judgment might have been somewhat more definite in this respect; but when we look at the whole case, we think the parties will not probably lose any of their rights from the cause complained of. It has long been settled by this court, that the verdict of a jury must always be understood and construed with reference to the pleadings, and it will always be considered as responding to the issues made by them. 5 M. R., 456, 3 L. R., 70. When we refer to the petition, we see it stated, that the plaintiff is entitled to the eastern portion of the land, he says his buildings and improvements are on it; that the defendant has his on the western part, if the line shall be run north and south. The defendant claims in the same way, and says the same thing, it will be somewhat strange, if the parties misunderstand each other and their rights, when they agree in their statements as to the position of each other. But if any mistake shall be likely to arise, we do not doubt the district judge will, when the *proces verbal* of the survey shall be returned into court, state distinctly which portions of the lots of land the plaintiff shall have.

We are of opinion a division of each lot of land into two equal portions by a north and south line is legal and just. We, therefore, affirm the judgment with costs.

I certify the foregoing to be a true copy of the judgment rendered in the above recited case, taken from the records of my office.

Given under my hand and seal of the supreme court, for the western district of the State of Louisiana, at Alexandria, on this 8th day of March, A. D. 1843.

[L. S.]

A. L. BRINGHURST, *Deputy Clerk.*

Minutes.

And on Thursday, May 4th, A. D. 1843, the following entry was made on the minutes of the court, p. 416.

R. C. DOWNES
vs. } No. 512.
WM. S. SCOTT.

Motion filed by defendant to have a survey made.

Motion.

NINTH DISTRICT COURT, *parish of Madison.*

R. C. DOWNES
vs. } No. 512.
WM. S. SCOTT.

The defendant, Wm. S. Scott, by his undersigned counsel, moves the court for an order directing Alfred H. Foster, esq., or John C. Whitfred, esq., the parish surveyor, to proceed to make a survey of the two tracts of land in dispute, and to run and mark lines dividing said two tracts of

land between plaintiff and defendant, according to the judgment of the district and supreme courts, and that he return the process verbal of his proceedings into this court, on or before the first day of its next term.

SNYDER, STACY, & SPARROW,
Attorneys for defendant.

Endorsed, 512. R. C. Downes vs. W. S. Scott. Motion filed by defendant, May 4th, 1843.

Filed, A. R. POTTER, *Dep. clerk.*

Clerk's certificate.

STATE OF LOUISIANA, *parish of Madison:*

Ninth judicial district court.

I, John T. Mason, clerk of the ninth judicial district court of the State of Louisiana, in and for the parish of Madison, do hereby certify, that the foregoing thirty-three pages, numbered from one to thirty-three, inclusive, contain a full, true, and complete transcript of all the proceedings had, and of the documents filed, in a suit, number five hundred and twelve, on the docket of said court, wherein Richard Charles Downes is plaintiff, and William S. Scott is defendant; and also, that it contains a full and true statement of all the evidence offered on the trial of said suit.

In testimony whereof, I have hereunto set my hand, and caused the [L. S.] seal of said court to be hereunto affixed, this sixth day of October, in the year of our Lord eighteen hundred and forty-three.

JOHN T. MASON,
Clerk of the 9th district court, parish of Madison, La.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the 9th judicial district court of the State of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, or some of you, between Richard Charles Downes as plaintiff, and William S. Scott as defendant, a manifest error hath happened, to the great damage of the said Richard Charles Downes, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 28th of April, in the [L. S.] year of our Lord one thousand eight hundred and forty-three.

DUNCAN N. HENNEN,
Clerk of the United States circuit court and eastern district of Louisiana.

The United States of America to William S. Scott, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the second Monday of January next, pursuant to a writ of error, filed in the clerk's office of the district court of the ninth judicial district of Louisiana, wherein Richard Charles Downes is plaintiff in error, *plaintiff in error*, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this nineteenth day of May, in the year of our Lord one thousand eight hundred and forty-three.

E. K. WILLSON,
Judge 7th, presiding in the 9th district.

STATE OF LOUISIANA, *parish of Madison:*

Personally came and appeared before me, John T. Mason, an acting justice of the peace, in and for the parish and State above named, Joseph L. Hynes, an acting deputy marshal of the United States, for the eastern district of Louisiana, who being duly sworn, deposed and saith, that he did, on the 15th day of July, 1843, make personal service of the within citation in error, on the defendant W. S. Scott, in the parish of Madison, State of Louisiana.

J. L. HYNES,
Deputy United States marshal.

Signed and sworn to before me, this seventh day of August, 1843.

JOHN T. MASON,
Justice of the peace, parish of Madison, La.

DISTRICT COURT, *9th district, parish of Madison:*

Marshal's return.

Received on the 15th day of July, A. D. 1843, and on the 15th day of July, 1843, I made personal service of the within citation on the defendant, W. S. Scott, by handing the same to him at his domicil, in the parish of Madison, State of Louisiana.

A. SIDNEY ROBERTSON,
United States marshal.
By J. L. HYNES, *Dep. U. S. marshal.*

Filed, 1844.